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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,189 11/20/2003		Tsutomu Okada	17272	9810
	7590 04/25/200 TT MURPHY & PRES	EXAMINER		
400 GARDEN	CITY PLAZA	VRETTAKOS, PETER J		
SUITE 300 GARDEN CIT	Y, NY 11530	ART UNIT	PAPER NUMBER	
	•	3739		
SHORTENED STATUTOR	Y PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE	
31 DAYS . 04/25/2007			PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary Examiner Peter J. Vreitakos 3739 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE J MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THISC COMMUNICATION. Formation of terminary be availation user the provious of 37 CFR 1.139(a). In overthe towers, are apple to them; the correspondence address - Period for Period to the period for reply is specified above, the maximum statutory pedice will apply and will expire SK (b) MONTHS from the melting date of this communication. Fause to bey within the soor remained period for reply the specified above, the maximum statutory pedice will apply and will expire SK (b) MONTHS from the melting date of this communication. Fause to bey within the soor remained period for reply the specified period for the period of the communication, even if smally fired. They reduce along the communication of the communication is period to the communication is not period by the communication is not period to the communication is not period by the communication is not period to the ments is closed in accordance with the practice under Ex parte Quayle, 1935 c.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 59-71 is/are pending in the application. 4a) Of the above claim(s) [s/are withdrawn from consideration. 5) Claim(s) [s/are allowed. 5) Claim(s) [s/are allowed. 6) Claim(s) 59-71 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on [s/are. a) accepted or b) objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on [s/are.			Application No.	Applicant(s)			
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Application/Control Number: 10/718,189

Art Unit: 3739

DETAILED ACTION

This action is in response to the Applicant's correspondence dated 2-9-07.

The Amendment has induced a restriction requirement.

Independent claims are 59 and 65. Claims 59-71 are pending.

The application is published application number: 2004/0210215. The publication is classified in US 606/45.

The Applicant is requested to provide (or check for accuracy) at the beginning of the Specification updated status information (serial numbers and patent numbers) of all related applications.

The Applicant is referred to 35 U.S.C. § 121:

35 U.S.C. 121 Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application as filed, the Director may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Director to require the application to be restricted to one invention.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

 Claims 59-64, drawn to a single electrode monopolar diathermic cutter, classified in class 606, subclass <u>45</u>. Art Unit: 3739

II. Claims 65-71, drawn to a double electrode bipolar diathermic cutter, classified in class 606, subclass 48.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to related cutters. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have materially different designs (monopolar v. bipolar). Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

A telephone call was made to Tom Spinelli on 4-20-07 to request an oral election to the above restriction requirement, but did not result in an election being made.

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Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pete Vrettakos April 22, 2007 ROY D. GIBSON
PRIMARY EXAMINER